

ASSEMBLY BILL

No. 1059

Introduced by Assembly Member Lieber

February 20, 2003

An act to add Section 1953.5 to the Civil Code, relating to landlord and tenant.

LEGISLATIVE COUNSEL'S DIGEST

AB 1059, as introduced, Lieber. Landlord and tenant: harassment.

(1) Existing law regulates the terms and conditions of residential tenancies. Existing law restricts the times when, and the circumstances under which, a landlord may enter the dwelling of a tenant. Existing law provides that a landlord in a rent control jurisdiction who evicts a tenant based on a fraudulent intention to occupy the tenant's unit may be liable for treble damages, as specified.

This bill would prohibit a landlord from doing or failing to do a variety acts with the intent of vexing, annoying, harassing, or injuring another person with respect to property that is a person's principal residence and that is subject to a rental housing agreement, as defined. The bill would include among these prohibited acts, failing to provide housing services, as specified, failing to perform repairs, failing to use diligence in completing repairs, abusing the landlord's right of access, abusing the tenant with offensive words, and influencing a tenant to vacate by fraud. The bill would provide for criminal and civil penalties for a violation of its provisions, including imprisonment or a fine of \$5,000, or both.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1953.5 is added to the Civil Code, to
2 read:
3 1953.5. (a) As used in this section:
4 (1) "Fraud" means intentional misrepresentation, deceit, or
5 concealment of a material fact.
6 (2) "Housing services" means a benefit, privilege, or facility
7 that is provided to the tenant in connection with the use or
8 occupancy of a rental housing unit, including, but not limited to,
9 hot and cold water, heat, electricity, gas, refrigeration, elevator
10 service, window shades and screens, storage, kitchen, bath, and
11 laundry facilities and privileges, janitor services, refuse removal,
12 furnishings, telephone, parking, effective waterproofing and
13 weather protection, and painting. Housing services include a
14 proportionate share of services provided to common facilities of
15 the building or area containing the rental housing unit.
16 (3) "Landlord" means an owner, lessor, or other person
17 entitled to receive rent for the use and occupancy of a rental
18 housing unit, or his or her agent, representative, or successor.
19 (4) "Malice" means an intent to vex, annoy, harass, or injure
20 a person.
21 (5) "Rental housing agreement" means an agreement, oral,
22 written, or implied, between a landlord and tenant for the use or
23 occupancy of a rental housing unit and for housing services.
24 (6) "Rental housing unit" means a property or a portion of a
25 property that is used as the principal place of residence by an
26 individual, including a single-family home, roominghouse,
27 apartment, mobilehome or mobilehome space, or trailer or trailer
28 space.
29 (7) "Tenant" means a tenant, subtenant, lessee, sublessee, or
30 other person entitled under the terms of a rental housing agreement
31 to the use or occupancy of a rental housing unit.



(b) With respect to a rental housing unit subject to a rental housing agreement, a landlord may not do any of the following with malice:

(1) Interrupt, terminate, or fail to provide housing services required by contract or by state, county, or local housing, health, or safety laws.

(2) Fail to perform repairs and maintenance required by contract or by state, county, or local housing, health, or safety laws.

(3) Fail to exercise due diligence in completing repairs and maintenance after they are undertaken.

(4) Abuse the landlord's right of access into a rental housing unit as specified in Section 1954.

(5) Abuse a tenant with words that are offensive or inherently likely to provoke an immediate violent reaction.

(6) Influence or attempt to influence a tenant, through fraud, intimidation, or coercion, to vacate a rental housing unit or to refrain from lawfully and peacefully exercising any of the tenant's rights under the law.

(7) Threaten the tenant by word or gesture with physical harm.

(8) Terminate or attempt to terminate a tenancy, including service of a notice to quit or other eviction notice, or bring an action to recover possession of a rental housing unit, based upon facts that the landlord does not have reasonable cause to believe to be true or upon a legal theory which is untenable under the facts known to the landlord.

(9) Interfere with a tenant's right to the quiet use and enjoyment of a rental housing unit.

(10) Refuse to acknowledge and provide written receipt of a tenant's lawful rent payment.

(11) Interfere with a tenant's right to privacy.

(c) This section may not be construed to prevent the lawful eviction of a tenant by appropriate legal means or apply to occupancies defined by subdivision (b) of Section 1940.

(d) (1) A person who is convicted of violating this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not greater than five thousand dollars (\$5,000) or by imprisonment in a county jail for not more than six months, or by both that fine and imprisonment.

(2) A person who violates, or aids or incites another person to violate, the provisions of this section is liable for each offense for



1 the actual damages suffered by an aggrieved party or for statutory
2 damages in the sum of five thousand dollars (\$5,000), whichever
3 is greater. That person or persons shall also be liable for attorney's
4 fees and costs as may be determined by the court. The court may
5 also award punitive damages to any plaintiff, in a proper case as
6 defined by Section 3294 of the Civil Code. The burden of proof for
7 purposes of punitive damages shall be clear and convincing
8 evidence.

9 (3) Any person, including any district attorney, county counsel,
10 or city attorney, may enforce the provisions of this section by a
11 civil action. The burden of proof shall be a preponderance of the
12 evidence. A violation of this section may be asserted as an
13 affirmative defense in an unlawful detainer action. A court of
14 competent jurisdiction may enjoin a person who commits an act,
15 proposes to commit an act, or engages in a pattern of practice, that
16 violates this section.

17 (4) The rights and remedies provided in this section are
18 nonexclusive, and are in addition to all those rights and remedies
19 that are otherwise available under any other provision of law.

20 SEC. 2. No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.

